JD-100-17
Memphis, TN

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AMERIPRIDE SERVICES, INC.

and **CASES 15–CA–167488**
15–CA–170246

WORKERS UNITED, a/w SERVICE EMPLOYEES INTERNATIONAL UNION

William T. Hearne, Esq., for the General Counsel.
John F. Bowen, Esq. *(John F. Bowen, Ltd.)* and
Timothy J. Peters, Esq. *(Peters Law Firm, LLC),*
for the Respondent.
Harris Raynor, for the Charging Party.

DECISION

Statement of the Case

IRA SANDRON, Administrative Law Judge. This matter is before me on a consolidated complaint and notice of hearing (the complaint) issued on March 30, 2017, arising from unfair labor practice (ULP) charges that Southern Region Workers United, affiliated with Service Employees International Union (the Union) filed against Ameripride Services, Inc. (the Respondent or the Company).

Pursuant to notice, I conducted a trial in Memphis, Tennessee, on July 10–14, and August 21–24, 2017, at which I afforded the parties a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. In short, the General Counsel contends that the Respondent engaged in a pattern of unlawful conduct designed to undermine the Union's status as the collective-bargaining representative of the production employees at its Memphis, Tennessee facility (the facility or the plant) and then unlawfully withdrew recognition. For reasons to be stated, some based on credibility and others on applicable law, I find no merit to the allegations.

Issues

(1) Did the Respondent, starting on about July 20, 2015,[1] fail and refuse to bargain with the Union about the Company's plan to implement testing of an incentive pay bonus plan for ironers at ironer #2 (the beta test)?

(2) Did Production Manager Brian Forehand and Chief Engineer David Brigance,[2] on about September 23, undermine the Union by telling employees that the Union was responsible for the Respondent's decision not to implement the incentive pay bonus system that was a component of the beta test?

(3) Did the Respondent, starting in about September, fail and refuse to bargain with the Union about the Company's plan to implement on January 1, 2016:

A. Changes to employees' vacation accrual, including payment of a one-time lump-sum payment to those who would be adversely affected (vacation bonus); and
B. A new short-term disability (STD) benefit?

(4) Did Forehand, in about November, undermine the Union by telling employees that the Union was responsible for delays in the Respondent's implementation of the new vacation-accrual system and of payment of the vacation bonuses?

(5) Did Forehand, on about November 14, undermine the Union by telling employees that the Union was responsible for the Company's failure to offer them wage increases?

(6) Did Forehand, on two occasions on November 14, solicit the decertification of the Union by asking employees LuCretia Lewis and Rhonda Isom to sign such a petition?

(7) Did the Respondent in about December, change its policy regarding seniority and shift transfers by transferring Melvin Boddie from the first shift to the second shift without affording the Union notice and an opportunity to bargain?

(8) Did Forehand, on January 20, 2016, bypass the Union and deal directly with a unit employee by soliciting Boddie to withdraw his pending shift-change grievance?

(9) Did the Respondent, at various times from about January 6–15, 2016, in connection with bargaining over a successor collective-bargaining agreement

[1] All dates hereinafter occurred in 2015 unless otherwise indicated or the context clearly shows a different year.

[2] Brigance's last name is misspelled as "Borgance" throughout the transcript.

(CBA), (A) unreasonably delay meeting with the Union; (B) make regressive and unreasonable bargaining proposals; and (C) otherwise fail and refuse to bargain in good-faith?

(10) Did Forehand, on about January 15, 2016, solicit the decertification of the Union by asking Shelia Wright to revoke her signed union dues-checkoff card?

(11) Did the Respondent, on January 15, 2016, unlawfully withdraw recognition of the Union as the exclusive bargaining representative of the facility's production employees, based on a petition that employee Jameson Payne presented that day to Customer Administration Manager Ricky Lauderdale?

(12) Did the Respondent, on about January 18, 2016, unlawfully make the following changes without affording the Union notice and an opportunity to bargain:

A. Granted employees paid sick leave benefits;
B. Granted employees paid jury duty benefits;
C. Provided employees with a paid personal holiday on their birthdays:
D. Eliminated the half holiday on Christmas Eve and instead paying employees a $100-bonus;
E. Increased the attendance bonus amounts; and
F. Granted all employees a wage increase?

(13) Did General Manger Kenny Morehead, on January 26, 2016, by requiring union vice-president/steward Patricia (Trina) Porter to clock out and use unpaid leave to attend a grievance meeting off-premises, at a Starbucks: (A) discourage her from engaging in union activities; (B) discriminate against her for engaging in union activities; and (C) implement a new policy without affording the Union notice and an opportunity to bargain?

Witnesses and Credibility

The General Counsel called:

(1) Harris Raynor, the Union's southern regional director;
(2) Sheila Dogan, the Union's business representative for the facility;
(3) Supervisor Harvey Streater under Section 611(c). Streater was a unit employee and union president at the facility until his promotion to production supervisor on about November 23.
(4) Patricia (Trina) Porter, union vice-president/steward;
(5) Patricia Morgan, union steward; and
(6) Employees Melvin Boddie, Sonja Jackson, and LuCretia Lewis.

Boddie and Jackson were subpoenaed to appear on July 20 but failed to attend that day or at any time during the first week of trial. The General Counsel thereafter sought subpoena enforcement, and on July 16, 2017, Judge Jon McCalla of the United States District Court for

the Eastern District of Tennessee issued orders that they comply with their respective subpoenas. He directed them to appear on Monday, August 21, 2017, and they did so. They can appropriately be deemed reluctant witnesses.

The Respondent called:

(1) Managers Morehead, Forehand, and Lauderdale;
(2) Supervisors Streater and Natasha Malone;
(3) Chief Engineer Brigance (formerly production manager);
(4) Employees Ethel Jones(former union treasurer) and Jamison Payne; and
(5) Grant Sperry, who the parties stipulated to be an expert witness in forensic document examination. Sperry set forth in considerable detail how he arrived at his conclusions on whether Boddie's and Streater's purported signatures on certain documents were authentic; and his testimony was consistent, coherent, and comported with that of Boddie and Streater. I therefore credit him and accept his conclusions.

Resolution of many of the issues hinges on credibility resolution, a task complicated by weaknesses in the testimony of witnesses on both sides. In this type of situation, I emphasize the well-established precept that a witness may be found partially credible; the mere fact that the witness is discredited on one point does not automatically mean that he or she must be discredited in all respects. *Golden Hours Convalescent Hospitals,* 182 NLRB 796, 799 (1970). Rather, a witness' testimony is appropriately weighed with the evidence as a whole and evaluated for plausibility. Id. at 798–799; see also *MEMC Electronic Materials,* 342 NLRB 1172, 1183 fn. 13 (2004), quoting *Americare Pine Lodge Nursing,* 325 NLRB 98, 98 fn. 1 (1997), enf. granted in part, denied in part 164 F.3d 867 (4th Cir. 1999); *Excel Container,* 325 NLRB 17, 17 fn. 1 (1997). As Chief Judge Learned Hand stated in *NLRB v. Universal Camera Corp.,* 179 F.2d 749, 754 (2d Cir. 1950), regarding witness testimony, "[N]othing is more common in all kinds of judicial decisions than to believe some and not all." In this regard, a number of witnesses testified credibly on certain matters but not believably on others.

Following are my credibility assessments, including a description of flaws or weaknesses that I find in various witnesses' testimony. I will further address credibility resolutions on particular points in the facts section.

A. The General Counsel's Witnesses

Union Regional Director Raynor

Raynor testified that bargaining over a new CBA was scheduled to start at 9:30 or 10 a.m. on January 6, 2016, but was delayed to 11 a.m. due to a grievance meeting of which he was unaware. However, his email of December 29 (GC Exh. 16 at 1) states, "I anticipate meeting the committee at 9:30 a.m. Can we start with you guys about 10:30?" Moreover, his testimony that Morehead agreed to meet for negotiations on a new CBA on both January 6 and 7 was not supported by their earlier correspondence.

Business Representative Dogan

Dogan's testimony regarding the written statements that she purportedly received from Boddie and Streater sheds considerable doubt on her overall reliability as a witness.

As to the circumstances of how she received a written statement from Boddie concerning the shift transfer (R. Exh. 3), Dogan first testified that Boddie wrote out and signed it in her presence but later testified that she took the statement over the phone and he subsequently signed it. She first testified that she was not certain if that was the statement she used to close his grievance but later that it was. Either way, Boddie contradicted her testimony, testifying that he did write a statement for her but that Respondent's Exhibit 3 did not look like his handwriting or the statement that he wrote, and he could not recall seeing it before August 21. In this regard, forensics document expert Sperry testified that it was "highly probable," or 95–99 percent probable, that Boddie's purported signature in Respondent's Exhibit 3 was not his, based on other specimens of Boddie's signature that he analyzed. I also note that according to Respondent's Exhibit 3, Forehand told Boddie on January 20 to sign the petition to get rid of the Union; this makes no sense because the Respondent had already withdrawn recognition 5 days earlier. The document is therefore unreliable.

Turning to Streater's statement (R. Exh. 8), Dogan testified that Streater came to her home on November 16; she wrote down exactly what he told her about his interactions with Payne and Forehand in the break room on about November 13 (as well as what Forehead and Morehead said to him about the Union in later conversations); and he then signed his name on each of the two pages. However, Streater testified that the signatures on Respondent's Exhibit 8 were not his and that he had never before seen the document. Consistent with Streater's testimony, Sperry opined that, as with Boddie's purported signature, it was "highly probable," that the signatures on Respondent's Exhibit 8 were not Streater's, and he further concluded that Streater did not prepare the text on either of the two pages of the document. I note that Streater was not questioned about the contents of Respondent's Exhibit 8, including purported conversations that he had with Brigance, Forehand, or Morehead. Therefore, this document, too, is unreliable.

The General Counsel contends (Br. 38–39) that Dogan's testimony concerning Respondent's Exhibits 3 and 8 is bolstered by the following. Payne and Streater testified that on about the morning of November 13, Payne was in the break room before his shift when Streater came in, asked about the petition, and stated that Payne could not bother employees while they were on the clock. Payne denied this. Forehand overheard their conversation and told Streater that he was not supposed to be conducting union business on worktime and should go back to his work area. A day or so afterward, Streater asked Payne how many names he had on the petition, and later that morning, Forehand approached Streater on the production floor and told him that he could not keep conducting union business on his worktime. Forehand's statements are not alleged as violations of Section 8(a)(1), and the General Counsel does not explain, and I fail to see, how those statements serve to rehabilitate Dogan's credibility.

Concerning the beta test, after Raynor questioned her about what was going on, Dogan responded by an August 5 email (GC Exh. 6). She stated that the Company was "implementing

the equipment now" and she was viewing the equipment the following day. However, the equipment had been put into place on July 20, and napkin ironers had received incentive bonuses retroactive to that date. The communications between Raynor and Dogan show a degree of friction, and I believe that her response to him was self-serving rather than accurate.

With further regard to the beta test, Dogan testified unconvincingly that she could not recall any conversations with Brigance about temps. However, Streater and Forehand corroborated Brigance's testimony that he discussed the subject with her, as did Dogan's description of a conversation that she had with Forehand after he took over as production manager.

Dogan professed surprise that Morehead wanted to meet with her to discuss the shift transfer grievance on the morning of January 6, 2016. However, in her email of December 29 to Morehead, Dogan suggested that since negotiations were scheduled next week and Raynor would be there, they could discuss the grievance then (GC Exh. 34 at 1).

Supervisor and former Union President Streater

As a company witness, Streater answered questions readily and consistently. However, on 611(c) examination, he first testified that Brigance stated to him that the Union opposed the temps getting premium or incentive pay, but he then flip-flopped and testified that Brigance did not say this. His affidavit, taken in the presence of the Company's counsel, supported his initial testimony. Streater also testified that Brigance did not say to the effect that all employees should be entitled to the premium, but his affidavit again contradicted this testimony.

In a text to Dogan on September 23 (GC Exh. 32 at 2), Streater stated, "They r claiming to the while[sic] plant that u stop production pay." Streater testified that the "they" referred to "all production employees."[3] It is nonsensical that employees would be claiming something to themselves. The only logical conclusion, based on the language itself and the rest of their text chain, is that the "they" referred to management. I have to conclude that Streater was deliberately avoiding having to give an answer that he viewed as damaging to the Respondent.

Vice President Porter

Porter conceded that she was "really confused about the dates"[4] in reference to when she first heard about the petition and when the Company held a meeting about the vacation-accrual policy changes. As to the January 26 grievance meeting, the second at Starbucks, she changed her testimony regarding with whom she went, from Dogan to grievant Anthony Shannon. Porter further testified that Morehead attended the first Starbucks meeting when, in fact, he did not.

[3] Tr. 635, 636.

[4] Tr. 665.

I do find her testimony that on January 26, Morehead was the one who initiated their conversation about her clocking out for the grievance meeting more plausible than his account that she approached him on the subject. On the other hand, I also find believable Morehead's uncontroverted testimony that he told Porter this was because the Respondent no longer recognized the Union, and the situation was therefore a new one.

Union Steward Morgan

Morgan, too, was poor on dates and conceded that she was nervous and confused in recalling the different meetings that she attended. Moreover, there were inherent inconsistencies between the written statement that she provided to Dogan regarding what she was told about the cessation of the beta test (GC Exh. 42) and other evidence of record.

Employee Boddie

Boddie, who as noted did not appear until so ordered by Judge McCalla, had a sketchy recall of many events; in particular, his description of his January 20, 2016 conversation with Forehand about withdrawing his grievance was convoluted and difficult to follow.

Employee Jackson

Jackson, the other witness who had to be ordered to appear, also had a sketchy recall of meetings that she attended, and she offered conflicting testimony concerning whether any supervisors or managers ever informed her about her potential loss of vacation time due to the upcoming changes in vacation accrual.

Her testimony about a conversation that she had with Payne in her work area concerning the petition, which she signed on November 20, was contradictory. Thus, she testified at one point that he was talking to everyone in the area but later that he was talking only to her. In this respect, her affidavit stated, "No one else was standing there when I spoke to Payne about the petition, but I did see people walk past us." This clearly implies that other people were not stationed in the vicinity.

Moreover, her testimony that Payne told her that the she had to sign the petition to get vacation pay and said nothing about getting rid of the Union was confused and uncertain. It also sounds implausible in light of the fact that the Respondent on September 29 had distributed letters to employees, including Jackson, who would be negatively affected by the upcoming changes in vacation accrual. Accordingly, I credit Payne's testimony that he told employees that the purpose of the petition what was stated on its face—the Union's decertification.

Employee Lewis

Lewis' testimony was limited to events on Saturday, November 14, when she, Supervisor Malone, and coworker Rhonda Isom were working, more specifically statements that Malone and Forehand made regarding the petition.

Thus, Lewis testified that after being on the phone, Malone stated that Forehand wished to know if Lewis or Isom wanted to sign the petition to get rid of the Union. Malone and Forehand denied that they had a phone conversation that morning, and Malone denied making such a statement.[5] About 10–15 minutes later, Forehand arrived at the work area. At the time, Malone, Lewis, and Isom were talking about the Union. Although Lewis' testimony was somewhat confusing, she finally confirmed that they were all talking about things that they did not like about Dogan and the Union, after which Forehand stated they could sign the petition if they felt that way.

Lewis made no apparent efforts to exaggerate or slant her testimony in general. In this regard, she testified that she and Malone both complained to Forehand about Dogan and what Dogan and the Union did not do. Lewis' testimony about her conversation with Malone, who was formerly a unit employee, was detailed, credible, and partially corroborated by Malone. Malone did not dispute any of Lewis' testimony on what they said; she testified that she could not recall any specifics of their conversation other than saying that she did not want to be involved in signing the petition—testimony that comported with Lewis'. In light of these factors, I do not believe that Lewis fabricated what Malone stated.

Lewis' depiction of what Forehand said after he arrived in the work area was similarly plausible. I note that the statements she attributed to Forehand about Dogan accusing him of being a racist, and of Streater becoming a supervisor, were consistent with other record evidence. I credit her over Forehand's and Malone's testimony that Forehand said nothing about the petition to them that day.

The Respondent's Witnesses

Plant Manager Morehead

Morehead, who has been the plant manager since 2010 or 2011 and is thus an experienced high-level manager, testified smoothly on direct examination but frequently gave evasive, indefinite, and/or conflicting answers on cross-examination in response to simple questions that should have been easy to answer.

As to negotiations over a new CBA, Morehead's testimony about who suggested on January 6, 2016, that the parties continue to bargain on January 7 was patently contradictory and evasive. On direct-examination, he first testified that he and Lauderdale initiated the idea and proposed it to Raynor, but shortly thereafter testified that they reacted to Raynor's proposal.

On cross-examination, Morehead was evasive and equally inconsistent on the subject. His initial testimony clearly indicated that Raynor suggested the idea; he then professed that he

[5] To the extent that the Respondent produced Forehand's business phone records and texts for November 14 (R. Exh. 36) to show that he did not call Malone, they do not preclude the possibility that he could have called her on a different phone.

could not recall if Raynor suggested continuing negotiations on January 7; and finally, in response to my question, he testified, "I think Harris asked if we were available, and the answer was, I've got to talk to Ricky . . . to make sure he's available. And that's—that was—so did he suggest? No. He asked."[6] This seesawing testimony and semantic hair-splitting over a straight-forward fact was disingenuous, demonstrated an attempt to try to tailor answers in favor of the Company, and diminished Morehead's overall credibility.

Concerning the grievance meeting with Dogan on January 6 on Boddie's shift change, Morehead testified that Dogan had previously missed a step 3 grievance meeting with him, but he backtracked on cross-examination: "[W]hat I'm saying is my memory—I remembered having a meeting. And maybe I was incorrect. . . . "[7]

Morehead first testified that he could not recall ever seeing General Counsel's Exhibit 35, a flyer that Dogan distributed to employees concerning contract negotiations. However, the General Counsel produced General Counsel's Exhibit 45, a January 8, 2016 email from Forehand to Morehead and other members of management, entitled "Smear Propaganda," attaching General Counsel's Exhibit 35 and stating, "FYI. . . . This is the sheet that was passed out today by the employee committee. . . ." Morehead claimed that he did not recall receiving that email, testimony that I find completely unbelievable. I have to assume that with a title of "smear propaganda," the email would have caught Morehead's attention and not have been something that he would have forgotten. This professed lack of recall regarding General Counsel's Exhibits 35 and 45 is especially incredulous considering the following.

Morehead first answered no when the General Counsel asked if there was a meeting with employees in November at which the issue of decertification was discussed. He also answered no when the General Counsel asked if the Company passed out any handout regarding the petition. However, he subsequently confirmed that he conducted a meeting with all production and maintenance employees on January 11, at which he distributed General Counsel's Exhibit 35 and the Company's responses to the Union's assertions (GC Exh. 46). Moreover, Morehead further testified that he assisted corporate HR in putting together the Company's responses.

Furthermore, Morehead confirmed that he recognized, assisted in preparing, signed, and had distributed to employees a memorandum dated November 12 (GC Exh. 48). At one point therein, he refers to "**reports that several employees are now seeking to oust the union.**" (emphasis added). When the General Counsel asked what he meant by this, Morehead gave the rather ridiculous answer that there were "some disgruntled employees" who "didn't want to be members anymore."[8] Under no reasonable construction can resignation from union membership be equated with "ousting."

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6 Tr. 1430.

7 Tr. 1435.

8 Tr. 1443.

Production Manager Forehand

On many subjects, Forehand appeared to answer candidly, credibly, and without trying to exaggerate. For example, he testified that neither Boddie nor Payne was pleased with their shift transfer and that such transfer did not result in a big increase in production. When I asked him how often the Company switched employees' shift, he answered, "[M]aybe a few times a year."[9] Finally, he testified on cross-examination that he probably told Theresa Schulz of corporate labor relations (LR) on November 15 that Dogan had stated she heard there was a petition to get rid of the Union.

Furthermore, not all of his answers meshed with those of other company representatives. For example, (1) his testimony differed from Morehead's regarding at what step of the grievance procedure Morehead gets involved and at what step the January 20, 2016 grievance was; (2) his description of how he and Lauderdale left the meeting with Dogan on November 11 differed from Lauderdale's; and (3) his explanation of why the Respondent decided to stop the beta test was not the same as Morehead's and Brigance's. Thus, Forehand testified that it was because the Company could not find a way to incentivize temps, in contrast to Morehead and Brigance's version that the reason was that the beta test did not result in increased productivity.

On the other hand, I am not satisfied that he was fully candid when it came to matters involving the petition, perhaps because he was later made aware that he should not have discussed it with employees. Thus, I credit Lewis that he made certain statements to her and Malone in their conversation on January 14, 2016.

I further note Forehand's about-face in answering whether there was anything in the CBA concerning shift changes. Although he testified on direct examination on August 23, 2017, that there was nothing in the agreement, he reversed his answer on cross-examination on August 24 and cited the management-rights clause of the contract (art. 2, sec. 2). He offered no explanation for this change in testimony.

Former Production Manager Brigance

Brigance was generally credible. He provided detailed, consistent, and credible accounts, and was corroborated in large measure by Streater. On one matter, his testimony was unconvincing, to wit, that he construed Dogan's statements that she did not care whether the temporary employees who worked on ironer no. 2 received incentive pay to be union opposition to their receiving such.

LR Manager Lauderdale

Lauderdale generally testified credibly. At certain points in cross-examination he appeared somewhat uncomfortable but nonetheless answered questions without pausing and without any apparent effort to obfuscate his answers. For example, Lauderdale answered yes

[9] Tr. 1689.

when I asked if he reported to corporate LR on November 11 that Dogan had brought up that morning the petition to get rid of the Union. Moreover, on cross-examination, he readily responded that he discussed with corporate LR that same day what the phrase "petition to get rid of the Union" meant. I also note that Lauderdale's version of what occurred on November 11 with Dogan was not identical to Forehand's, leading to the conclusion that their testimony was not scripted.

On the negative side, Lauderdale testified that he had two phone calls with Dogan in October concerning the employees who would be adversely affected by the change in vacation accrual. However, General Counsel's Exhibit 49, his email of November 13 to corporate HR, Morehead, and Forehand, concerning his communications with Dogan on the subject, made no mention of those phone calls or that he had spoken with Dogan about the seven-adversely affected employees. This may have been a simple oversight because Streater, as well as Lauderdale, testified that on November 4, Lauderdale gave her copies of the letters they had received. I credit them on this point over Dogan; ipso facto, the subject of adversely-affected employees was discussed at the meeting.

Supervisor Malone

Malone's testimony was limited to the events of November 14 involving LuCretia Lewis, which I earlier described. As noted, I credit Lewis' where her testimony diverged from Malone.

Former Union Treasurer Jones

Jones did not have a good recall of relevant management meetings with employees. However, her testimony regarding shift transfers and her withdrawal from the Union, including her conversations with Brigance and Dogan, was believable and unrebutted, and I credit her.

Employee Payne

Payne appeared candid and not attempting to slant his answers in favor of the Company or against the Union, or to exaggerate. For example, it is uncontroverted that he and Streater (then union president) had a conversation about the petition in the break room on about November 13 and that Forehand came in during their exchange. When I asked Payne if Streater spoke in a normal or loud voice, he answered "medium loud" and further testified that Streater approached him at a "normal walking pace."[10] I further note that Payne's testimony on direct and cross examination was generally consistent. Finally, Payne's testimony about his complaint concerning Dogan's conduct toward him on January 12, 2016, was consistent with the handwritten statement that he provided to management (R. Exh. l3).

My one reservation about Payne's testimony concerns why he chose January 15, 2016—serendipitously, the date that the current collective-bargaining agreement was expiring—to submit the petition to management: "I already had like a bounty out on me, and I

[10] Tr. 812, 813.

was like tired of like toting it around in my pocket or having to climb up on stuff and hide it or take it back and forth home and trying to keep it from getting wet in my pocket from me sweating so hard." [11]

Inasmuch as Payne testified that there was only one copy of the petition, that he first brought it to the plant on November 10, and that he brought it to work and took it home daily, I am not persuaded that he provided a believable explanation. The timing of the submission therefore raises the suspicion that Payne received direction.

Facts

Based on the entire record, including testimony and my observations of witness demeanor, documents, written and oral stipulations, and the helpful posttrial briefs that the General Counsel and the Respondent filed, I find the following.

At all times material, the Respondent, headquartered in Minneapolis, Minnesota, has been a corporation with an office and place of business in Memphis Tennessee (the facility or the plant), engaged in the business of providing industrial laundry services to hospitality, healthcare, and industrial customers. The Respondent has admitted jurisdiction as alleged in the complaint, and I so find.

The Respondent has approximately 150 branches or service centers in the United States and Canada. Branches, including the facility, process a variety of soiled linen products, including aprons, mats, mops, sheets, towels, and uniforms, which are brought in, sorted, cleaned, and dried before being taken to the service facilities for delivery to customers.

The facility has five departments: (1) production, which washes and sorts linen; (2) service; (3) sales; (4) administration, including Human Resources (HR); and (5) engineering. At all times relevant, Kenny Morehead has been the general manager and highest-ranking management official at the plant; Ricky Lauderdale has been the customer administration manager; Brian Forehand has been the manager of the production department; and David Brigance was the chief engineer.

In 2003, pursuant to a merger with another labor organization, the Union assumed representation of a unit of all production employees employed at the facility, and the Respondent recognized the Union as their collective-bargaining representative. There are approximately 50 full-time permanent production employees. The Company also employs an average of 10–20 non-unit temporary employees (temps), who are referred and paid by a halfway house.

Harris Raynor is the regional director for the Union and is responsible for three districts, including the one for which Sheila Dogan is a business representative. She operates out of her home and services over 10 bargaining units consisting of approximately 700–800 employees. At all times relevant, she was the Union's business representative for the facility. Prior to

[11] Tr. 853.

January 15, 2016, she normally visited the plant once monthly to meet with management and employees, not on any particular day of the month, unless an issue arose. She usually came around lunchtime and met with employees or management in the break room (aka cafeteria, canteen, or cafeteria).[12]

The most recent CBA (GC Exh. 2) was in effect from January 16, 2013 until midnight January 15, 2016.

July 2015 Beta Test

In July, there were two napkin ironers, designated as ironer no. 1 and ironer no. 2, each operated by five feeders or napkin ironers, one per lane. Effective January 13, 2014, corporate headquarters had set 1100 napkins per hour as the nationwide standard, and this standard was posted. For many years, the Company had tracked what each lane did by using "counters" that kept a running tally.

In early July, Morehead agreed to Brigance's suggestion that, in an effort to increase productivity, the Company implement a "beta test" on ironer no. 2 by tracking the percentage of time that the lane met the target of 1100 napkins and rewarding employees for meeting the standard. Indicator lights would be used on ironer no. 2, in conjunction with the counters, to give the napkin ironers visual stimuli as to whether they were achieving the 1100 standard per a 2-minute time span. A green light meant that they were meeting 100 percent of the standard, and for each hour that an ironer achieved that standard, he or she would receive a $1-an-hour bonus, up to $8 day. The idea was to compare the productivity of ironer no. 1 and ironer no. 2 to see if the visual stimulus (and bonus) made a difference.

Tracking based on the interface of the counters and the lights was implemented on July 20. The test ran for 3 weeks, during which only one employee, Dianne Peterson, achieved the production standard required to receive the $1-an-hour bonus. The test did not result in increased productivity inasmuch as Peterson had previously had a high level of production. Brigance and Morehead testified that the beta test was discontinued on August 7 for this reason, but Forehand testified that the reason was that the Company could not fashion a way to incentivize the temps who worked on the ironers.

A. Communications with the Union

Unless otherwise specified, communications between the Company and the Union were by email. Raynor communicated only by email, and Morehead sometimes by both email and letter.

On July 20, Brigance informed Dogan that the Company would be testing this premium pay system on ironer no. 2 for the FTE ironers, and he explained how the above hourly bonus would work (GC Exh. 3).

[12] Unless otherwise specified, all meetings described hereinafter occurred in the break room.

After consulting with Raynor, Dogan responded the next day (GC Exh. 4), stating that the Union could agree to the test provided the efficiency standard would be used only for payment of the bonus amount and not interpreted as the production standard for disciplinary purposes. She also raised the issue of whether the bonuses would be considered part of the employee's regular earnings when computing overtime pay.

The dates witnesses gave of subsequent interactions between the Company and the Union are impossible to reconcile. Dogan testified about only one meeting with Brigance (on August 6) and one meeting with Forehand (in late August or September), at which Streater was present. Inasmuch as the beta test ended on August 7, I question Dogan's testimony that Brigance told her on August 6 that they were installing the equipment and that she viewed the equipment but could not tell if it was operational. Moreover, her testimony regarding a meeting with Forehand in late August or September, in which she stated she was still waiting for updates, makes no sense in light of the beta test having ceased on August 7. Moreover, Dogan's testimony about what was said at the meetings was sketchy, and she could not recall any conversation about temps. In contrast, Brigance provided considerably more detail, and both Forehand and Streater corroborated his testimony that he raised the issue of temps and that Dogan's response was that she did not care about them. Accordingly, I credit his accounts over hers.

Brigance, testified about three meetings with Dogan (on about July 24, during the following week, and on August 12 or 13), at all of which Forehand and Streater were present. However, Brigance testified that Forehand was already the new production manager, but Forehand did not assume that position until August 23. Brigance conceded that he could not remember exact dates.

Forehand testified about only one meeting with Dogan (in the first week of August), although his description of the subject matter of their discussion strongly suggests more than one meeting and that his testimony was a composite. Thus, he testified that Brigance described how the tracking would work, and Dogan wanted a plan in writing; but he also testified that at this meeting, Brigance told Dogan that the Company could not formulate an incentive plan for temps and was therefore not going forward with the beta test.

Streater, who Brigance, Dogan, and Forehand all agree was present as the union president at any and all such meetings, did not testify about the number of meetings he attended or when.

As best as I can determine, I find the following.

On about July 24, Dogan visited the plant on a routine visit. The beta test was one of the subjects that she discussed with management, including the concerns that she had raised. Brigance showed her ironer no. 2 with the new interface and explained how it would work. She said that she understood what the Company was doing and was "on board" with it.[13] Thereafter, Brigance initiated the payment of bonuses retroactive to July 20.

[13] Tr. 1107 (Brigance).

Brigance and Dogan met again about a week later and had a further discussion of where the test was going. Brigance told her that the Company was still observing how it was working but did not yet have enough data to determine whether the test was resulting in any improvement. Brigance raised the issue how to treat the temps because there was a payroll issue with paying them a direct bonus without incurring extra costs (since they were paid through the temp agency). Dogan responded that she did not care about the temps, and he responded that any incentive system should apply to everyone.

On August 5, Raynor emailed Dogan, stating that she was supposed to get back to him after the Company responded, requesting a copy of the letter that she had send to Brigance, and asking if the Company had responded (GC Exh. 5). Later that day, Dogan replied that Brigance had not responded, that the Company was installing the equipment right now, and that she was meeting with Brigance and viewing the equipment the next day (ibid).

On or about August 6, another meeting occurred. Brigance told Dogan that the beta test was being called off, either because the stimulus was not working (Brigance) or because the Company could not find a way to incentivize the temps (Forehand). The program was ended on August 7.

On August 10, Dogan emailed Brigance, referencing their meeting the previous week to discuss the new production equipment and asking for a status update in writing (GC Exh. 6). She received no written response but testified that she later had a meeting with Forehand, after he became production manager, in which she asked for an update, and he replied they had difficulties determining whether to pay temps the incentive (consistent with Forehand's testimony of why the test was discontinued). She offered no further elaboration on what was said in their discussion. I can only speculate why she would have made requests for updates after August 6.

B. Statements Blaming the Union for Cessation of the Beta Test

The complaint alleges that Forehand and Brigance, on about September 23, told employees that the Union was responsible for the Company's cessation of the beta test. In this regard, Dogan testified that three employees related this to her—Porter, Streater, and Morgan.

Porter offered no testimony substantiating Dogan's assertion. Streater confirmed that he exchanged the following texts contained in General Counsel's Exhibit 32 with Dogan on September 23 (paraphrased):

Streater asked her if she had told Forehand no to give full-time workers production pay ($8/day) for meeting production.

Dogan replied that Forehand had to put his plan in writing to make sure they were doing it right.

Streater stated that "they" were claiming to the whole plant that "you" were stopping production pay.

Dogan responded that "he" was lying and Streater could tell him that she said so.

Streater stated that Brigance had told him that when Dogan was last there, she said that temps should not get production pay "so he figured if temps can't get it then neither should full-timers. That has the whole plant pissed."

Dogan planned to be at the plant on September 24, and she orally requested a meeting and had one with Forehand that day. Lauderdale and Streater also attended. She showed Forehand the text messages on her cell phone. Lauderdale responded that he was unaware that the Company was telling this to employees, and Forehand denied the accusation. Dogan testified that Forehand "put it on" Brigance, saying that Brigance was angry and trying to create problems because he was no longer the maintenance manager.[14] I do not credit this testimony, highly doubting that Forehand would have said this in front of Lauderdale. Accordingly, I do not reach the issue of whether such a statement would constitute admissible evidence under the party-opponent exception to the hearsay rule.

At trial, Streater was not asked if he actually heard the statements contained in his texts to Dogan and, in the absence of testimony that he did, they must be considered hearsay from what he heard from other employees.

No one else testified that they heard Forehand or Brigance make such statements, and Forehand and Brigance denied making them. Morgan testified that 2 or 3 weeks after the program was implemented (on July 24, retroactive to July 20), Morehead announced at a meeting of all production employees that the test run was over. At the meeting, he stated that they would not get the "bonus" anymore, that "the Union didn't want us to get the bonus . . . so they had to stop."[15] She could not recall the date of such meeting. However, Morgan affirmed this was the same meeting described in the undated statement that Dogan prepared and Morgan signed (GC Exh. 42). It says that Morehead made such a statement at a November 11 meeting concerning the leaflet that Dogan had distributed.

I find major problems with Morgan's testimony. Firstly, the date she gave for the meeting in her written statement was inconsistent with her testimony. Secondly, inasmuch as the beta test ended in August, it makes no sense that Morehead would have announced in November that it was over. Thirdly, the record contains two flyers that Dogan distributed to employees in January 2016, concerning negotiations over a new CBA (GC Exh. 35 and R. Exh. 5), but nothing that she distributed to employees in either August or November. Reconciling the contradictions in Morgan's statement vis-à-vis other evidence is therefore impossible.

Payne was the only other employee who was asked whether the Respondent held any plant meetings about incentive pay or bonus, and he could not recall any.

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[14] Tr. 320.

[15] Tr. 709.

As the Board has stated, "'Administrative agencies ordinarily do not invoke a technical rule of exclusion but admit hearsay evidence and give it such weight as its inherent quality justifies.'" *Midland Hilton & Towers,* 324 NLRB 1141, 1141 fn. 1 (1997), enf. denied on other grounds 598 F.2d 1267 (2d Cir. 1979), citing *Alvin J. Bart & Co.,* 236 NLRB 242, 242 (1978). See also *McCormick on Evidence § 352* (4th ed. 1992). Thus, hearsay evidence may be admitted "if rationally probative in force and if corroborated by something more than the slightest amount of other evidence." *Midland Hilton & Towers,* ibid.

Here, though, Morgan attributed the statement to Morehead, not to Forehand or Brigance, as alleged in the complaint, and her confusion on dates and events precludes establishing a sufficient foundation for the meeting. It follows that a necessary predicate is lacking for admission of any statements that she attributed to Morehead. It further follows that her testimony was not adequate corroboration of the hearsay statements contained in Streater's texts to admit them as reliable evidence.

Accordingly, I do not find as fact that any member of management told employees that the Respondent was discontinuing or had discontinued the beta test because of the Union.

Changes Announced on September 29, 2015

The complaint avers that since in about September, the Respondent failed to bargain over changes in the vacation-accrual policy, including payments to adversely-affected employees; and implementation of a new short-term disability (STD) benefit.

Art. 12, sec. 1 of the CBA provides the following vacation benefits:

All regular employees who have completed 1 calendar year of company service computing from the employee's last date of hire and have actually performed work of not less than 1,500 hours during the 12-month period immediately preceding the employee's vacation, will be entitled to:

(a) 1 week (5 days) vacation after 1 year (employee must work 1,500 hours or more each year).
(b) 2 weeks after 2 years.
(c) 3 weeks after 12 years.
(d) 4 weeks after 20 years.

The section also contains what the Respondent calls a "met too" clause: "If the Company improves vacation benefits during the term of the Agreement for other employees at the Memphis operation, such improvements shall also apply to bargaining unit employees." There is no mention of any company obligation to give the Union advanced notice of a beneficial change.

Art. 18, sec. 1, health and benefits, provides that the employer "agrees to provide life insurance, and make available hospitalization, medical, dental and long term disability benefits to all full-time employees" equal to the benefits contained in Company's Benefit Plan.

On August 31, Cheryl Heimer, director of compensation and benefits at corporate headquarters, sent general managers, including Morehead, a written copy of the uniform paid time off (PTO) Standardization that would be implemented for nonunion employees nationwide, effective January 1, 2016 (R Exh. 20).[16]

Vacation-accrual benefits for production employees were to be as follows:

0 – 2 years of service – 5 days (1 week).
3 – 9 years of service – 10 days (2 weeks).
10 – 14 years of service – 15 days (3 weeks).
15+ years of services – 20 days (4 weeks).

The vacation would accrue each pay period, employees could use vacation time as soon as it was accrued, employees could carry up to two times their annual accrual, and used time would be paid out at termination. Employees who would negatively impacted by the change in vacation accrual (those who would have qualified for 10 days after 2 years but would now have to wait until 3 years) would receive a lump-sum payout in their December 11 payroll checks.

Morehead and Lauderdale compared the new vacation-accrual benefits with those in the CBA and concluded that they were improvements falling under the "me too" language in art. 12. They recognized that some employees, those having between 1 and 2 years of service, were disadvantaged by the change but would be compensated by a lump-sum payment. They called Theresa Schulz, director of labor relations (LR) at headquarters, who agreed with their conclusion, and on September 17, Schulz advised Heimer that to be compliant with the CBA, the production employees in Memphis would have to change on January 1, 2016, to the new vacation-accrual policy (R Exh. 21).

On September 22, Heimer sent Morehead a spreadsheet of production employees at the facility (ibid). She determined that four employees would accrue less vacation for one pay period and that they could be provided with an additional accrual so they were not impacted. She also determined two other employees would accrue less vacation for approximately 7 months before they bumped to the next accrual level. She asked if Morehead wanted to provide them with the one-time lump sum payment to offset the period they had a reduction in accrual rate. Later, Morehead and Lauderdale found additional employees, including Jackson, who would be negatively impacted, and they so advised Schulz (see R. Exh. 22). Heimer and Schulz composed a template for individual letters to the seven adversely-affected employees, who would receive a bonus of $400, the amount set by corporate headquarters (see R. Exh. 23).

[16] PTO included holidays, sick leave, attendance incentive, vacation leave, and jury duty. Only vacation leave and STD are at issue.

A. Announcement to Employees and Communications with the Union

On September 29, Morehead, in the morning, and Lauderdale, in the afternoon, conducted meetings with all regular full-time production employees. They explained the upcoming changes in PTO policies, including changes in vacation accrual, the $400 buy-out for employees adversely affected by the vacation-accrual changes, and the new STD benefit. The adversely-affected employees were not named.

Streater, Porter, Jones, and Morgan, who at the time comprised all of the Union's local officials, attended the morning meeting. I credit Streater's uncontroverted testimony that when Lauderdale opened up the meeting to questions and comments, Porter was the first person to raise her hand, saying that she was good with it; Streater stated that it was a good idea; and no one expressed dissatisfaction.[17] I further credit his uncontroverted and plausible testimony that he called Dogan after he got off from work that afternoon and that they had they the following conversation. He reported what management had said at the meeting, she asked how employees felt, and he replied that everybody seemed to be on board. He also told her that management would meet with adversely-affected employees so they would understand how everything would be balanced.

Respondent's Exhibit 24, a generic memorandum describing the new vacation-accrual schedule and announcing the new STD benefit, was distributed to employees during or after the conclusion of the meeting.

That day, Morehead and Lauderdale met individually with each of the seven adversely-affected employees, either in the office outside the break room or in Morehead's office. The employees received personalized notices, explaining how the vacation change would negatively affect them and stating that they would receive a one-time lump sum payment in their December 11 payroll checks (GC Exh. 47).

Morehead testified that he did not notify the Union in advance of the September 29 meetings because he considered the changes to be improvements falling under the "me too" provision in the CBA. After the meetings, he did direct Lauderdale to notify Dogan of the changes in vacation and STD benefits, which Lauderdale did later that day (GC Exh. 7). Referring to art. 12,[18] Lauderdale attached the generic letter distributed to employees but not the personalized letters to negatively-affected employees, whom he did not mention.

That afternoon, Dogan responded (GC Exh. 8). She first referred to the CBA (art. 18, section 1) and stated, "[W]e are pleased to see the improvement of adding STD." Regarding vacation, she cited the "me too" provision in the CBA and stated that the Union welcomed as improvements moving the qualifications for a third week down to after 9 years and the fourth week to 15 years. She asked if her interpretation was correct that the new accrual system deleted the 1500 hours requirement and allowed employees to immediately begin accruing

[17] Lauderdale confirmed Porter's positive response and the lack of any negative feedback from employees.

[18] His reference to CBA page 15 was to the booklet version of the CBA, which is p. 16 of the printed version of the agreement, GC Exh. 2.

vacation time. Finally, she asked him to confirm that under the new accrual system, an employee out on leave during a payroll period would still accrue time toward days earned and that the time accrued during a payroll period would not depend on the actual number of hours worked.

The following morning, Lauderdale replied that employees would start accruing vacation time immediately and that employees on leave (Family and Medical Leave Act (FMLA) or vacation) would still accrue time during the payroll period (ibid).

On November 4, Dogan, Streater, Lauderdale, and Forehand attended one meeting on the subject of the vacation-accrual changes, as reflected by the testimony of Forehand, Lauderdale, and Streater, as well as Respondent's Exhibit 42 (Lauderdale's notes from the meeting), and General Counsel's Exhibit 11 (a letter from Raynor to Morehead).

As far as the meeting's genesis, I credit Lauderdale as follows, noting the consistency of his testimony on point on direct and cross-examination. Dogan called him the first or second week of October. They talked about other matters and only briefly discussed the PTO standardization policy. She acknowledged his last communication and repeated her previous questions and his previous answers. Lauderdale mentioned that the Company had provided letters to the seven adversely-impacted employees. In late October, she called and asked him to provide her with the seven letters in their upcoming meeting on November 4. Thus, the parties knew in advance that it would be a subject of discussion at the meeting. I do not credit Dogan's testimony that she was at the facility for a regular monthly meeting in early November and approached Forehand to schedule a meeting on the vacation accrual policy, especially in light of the fact that she had been communicating with Lauderdale on the subject.

Dogan was quite vague in describing the November meeting (she could not even recall if Lauderdale was present), and I find unbelievable her testimony that she could not recall a meeting on November 4 regarding the $400-payment or that the Company ever talked about a bonus. This was too important a subject for the Union for her to have a believable lapse of recall. On the other hand, Forehand, Lauderdale, and Streater gave plausible and consistent but not identical accounts of what was said at the November 4 meeting. Respondent's Exhibit 42 partially corroborates their testimony and does not in any way contradict it. Accordingly, I credit them and find as follows.

Dogan posed questions of Lauderdale regarding the impact of the vacation-accrual changes on employees with less than 2 years of service and those with more than 10. After Lauderdale reviewed the changes in benefits, Dogan stated that she was not very good with math and asked Streater how he felt. He replied, "Everybody's on board." [19] During the meeting, Lauderdale showed her the letters to the seven adversely-affected employees. I do not credit Dogan's testimony that Forehand stated that the PTO would be implemented even if the Union disagreed. Again, Lauderdale, not Forehand, was the Company's chief contact person regarding the new PTO policy.

[19] Streater at Tr. 1571; see also Tr. 1574.

B. Statements Blaming the Union for Delays in Receiving Benefits

Dogan testified that Jerrica Cooper and other employees told her on November 4 that Forehand was telling employees that their second week of vacation time would be delayed under the new accrual system and they would not be getting a $400 bonus because the Union had stopped the Company from giving it to them.

Neither Cooper nor any other employee testified at trial, and such statements are therefore hearsay. Such hearsay seems dubious in view of the fact that on that same day, Dogan and Streater met with Lauderdale and Forehand on how the new vacation-accrual policy would function, and Dogan was shown copies of the letters to the adversely-affected employees stating that they would receive a bonus. I therefore do not find as fact that Forehand made such statements.

C. Raynor's Involvement

Dogan testified that after hearing the above statements from employees, she turned the matter over to Raynor. By letter of November 13 to Morehead, Raynor advised that the Union did not agree with portion of the changes that reduced the negotiated vacation benefit for employees with 2 years of service. He confirmed that the Union had no issue with the new STD (GC Exh. 9).

Morehead responded on November 30, stating that the Company, relying on the "me too" clause, had announced the benefits to the unit employees and also informed the Union, which had never objected (GC Exh. 10 at 2). He went to state the Company's belief that the clause allowed it to unilaterally implement improvements to the benefits plans, "but because you are objecting, we will not offer these benefits to our Memphis employees until such time as you can further review and approve them." Morehead then stated that he was happy to discuss the details of the changes and answer any questions, concluding with, "In the meantime, we will inform our employees that they will need to wait for the benefit changes until such time as we hear back from you." Morehead testified that the Company did not, in fact, tell this to employees, and no direct evidence was provided to the contrary.

On December 2, Raynor responded to Morehead's November 30 letter (GC Exh 11, erroneously dated November 17). He expressed disagreement with Morehead's interpretation of the CBA as well his characterization of events. Regarding the November 4 meeting, Raynor stated that Dogan had voiced employee complaints that the new policy would have a negative effect on those becoming eligible for the second week and that the Union did not agree, to which management had responded that it was going ahead with the already-announced policy. Raynor concluded that since those changes had already been announced to employees, the Union could not and would not agree that the Company could now withdraw the new STD and improvements in vacation.

Shortly thereafter, on about the same date, Morehead called Raynor and offered an explanation of the vacation-accrual policy and how it worked. Raynor asked him for more information concerning the adversely-affected employees. Morehead stated that those

employees were going to get a bonus check on December 11 so Raynor had to give him an answer by December 4 in order for the checks to be issued on that date.

On December 3, Raynor reminded Morehead that if Raynor was to respond by Friday on the benefits issues, he needed to get the information that he had requested in time to evaluate them: the letter that went to employees, the people who would get checks and for how much, etc. (GC Exh. 12). Lauderdale responded later that day, attaching the general letter that went to all production department employees, the prototype letter that went to the seven impacted employees, and a list of the seven impacted employees (GC Exh. 13). In response, Raynor asked for additional explanation of how they arrived at the $400 amount (ibid), and he and Lauderdale had a phone conversation the following morning in which Lauderdale explained that no employee would lose anything from the accrual changes. As a result, Raynor advised Lauderdale that, with the explanation that Lauderdale provided, the Union would accept the vacation policy change as well as the STD policy previously accepted (GC Exh. 14).

The seven adversely-affected employees received the $400 lump-sum payment with their December 11 paychecks, as planned (see GC Exh. 43). The new vacation-accrual policy went into effect on January 1, 2016, as scheduled.

Boddie's December 2015 Shift Transfer

The General Counsel alleges that the Company committed two unilateral changes: (1) changed the policy regarding shift transfers; and (2) transferred Melvin Boddie from first to second shift. The General Counsel does not challenge the Respondent's underlying basis for the change, i.e., considerations relating to production.

The Company has no formal written policy on shift changes. Relevant provisions in the CBA are art. 9, sec. 1, which provides that seniority "shall be given consideration" in, inter alia, transfers and shift preferences; and art. 2, sec. 2, which gives management the right to transfer or assign employees.

In December, Boddie worked in the wash aisle in the soil department, where dirty linen is sorted and washed. Wash aisle employees work in teams, two on each shift. Both day and night shifts are supposed to reach a certain level of production by the end of the day.

Boddie primarily worked on the morning shift, although he had been assigned the night shift about once a month in the preceding 6 months. Jaime Payne, who had less company seniority, regularly worked the evening shift. Antonio Shannon worked a middle shift because Payne's team member was out on an injury.

The following facts are based on Forehand's and Payne's substantially similar and uncontroverted testimony, which I credit. Efficiency on the wash aisle is measured by how many pounds per hour go through. In the fall of 2015, the goal was 76,000 – 80,000 pounds collectively between the a.m. and p.m. shifts, with the a.m. shift to run 40,000 – 42,000 pounds. In December, the total poundage was not reaching that target.

Lighter items (sheets, napkins, and table cloths) wash more quickly and are termed "quick-turn" or "quick-wash" items, as opposed to heavier items (towels, bar mops, and blankets) that take more time. Management determined that Boddie was falling short of the morning goal because he was not balancing the loads between lighter and heavier items (a conclusion that Payne's testimony corroborated), resulting in a backup of work and longer hours for the p.m. shift.

In early or mid-December, Streater, Boddie's immediate supervisor, informed him by text that he was being moved to the evening shift, "flipping" with Payne. Boddie asked why, and Streater replied that they wanted to see how that affected production. Later that week or the beginning of the following week, Forehand told Boddie that this would be Boddie's schedule until further notice. Forehand candidly testified that when he spoke to Boddie and Payne about the shift transfer, neither of them reacted favorably, especially Boddie. Either before or after his conversation with Forehand, Boddie called Dogan to find out why he had been moved.

A. Grievance Meetings

Art. 15, sec. 3 of the CBA sets out the grievance and arbitration procedure. It is not a model of clarity. Step 1 provides that for discussion with the immediate supervisor of the employee(s); if not resolved, the grievance is to be put in writing, and the immediate supervisor shall respond in writing within 5 calendar days. If not settled at step 1, the grievance can be appealed to step 2, which actually consists of two steps rather than one; it first goes to the production manager (tier one), then to the general manager (tier two). Perhaps due to the convoluted language of step 2, witness' testimony was hopeless confusing in determine what step in the grievance procedure a particular meeting constituted. Moreover, there is no evidence that Supervisor Streater held a step 1 discussion with Dogan and Boddie or put anything in writing prior to Forehand's involvement, as required by the grievance procedure. I therefore am unable to definitively attach a grievance–step designation to any of the grievance meetings.

Prior to December 9, on a specific date she could not recall, Dogan testified that she had a meeting with Forehand, Lauderdale, Porter, and probably Streater. Based on the attendees, I conclude that it was a regular monthly meeting. This apparently was the same meeting that Boddie testified he attended with Dogan, Forehand and Lauderdale. Their versions of what Forehand said were not inconsistent and mirror the reasons that the Company has advanced for the shift transfer. No one other than Dogan and Boddie testified about the meeting.

Inasmuch as Boddie had a personal stake in what was said about his shift transfer, I credit his testimony as follows. Forehand stated that management had the right to switch schedules and that the switch was based on production. Dogan mentioned the possibility of a grievance, telling Boddie that she would have to look at the CBA and get back to him.

On December 9, Dogan filed a written grievance alleging violation of several articles of the labor agreement, including art. 9, sec. 1, but not providing the names of any employees or the specifics of the underlying situations (GC Exh. 33).

On December 23, Dogan and Forehand attended a meeting at which Forehand stated that the shift transfer had nothing to do with seniority but was based on performance expectations (see GC Exh. 34).

General Counsel's Exhibit 34 reflects the following. On December 29, Forehand formally denied the grievance on the above grounds. The next morning, Dogan emailed Morehead and requested a grievance meeting with him. That same morning, Morehead responded by email, suggesting that they meet that same day before lunch or the following Monday (January 4). Still that same morning, Dogan emailed Morehead and stated that she and her daughter had been involved in an accident. She went on to suggest that they discuss the grievance the following week when negotiations were scheduled and Raynor would be there. She received no further response. On cross-examination, Dogan conceded that in General Counsel's Exhibit 34, her "recommendation" was that they deal with the grievance on the first day of the negotiations.[20]

January 6, 2016 was the date Morehead and Raynor had scheduled to begin negotiations over a new CBA. That morning, after Dogan arrived to participate in negotiations, Morehead asked to see her to discuss the grievance. Based on the above, I discredit Dogan's claim that she was surprised by this. At the meeting, Dogan pointed out that she had not been provided any documentation concerning the shift transfer, and Morehead had Forehand bring in production records for Boddie but not for Payne. Dogan stated she could not work with that and that the Union would proceed to the next step.

Boddie's shift change did not result in a big increase in average pounds per operator but did decrease the amount of p.m. overtime work. The week before January 19, Forehand talked to Boddie about finishing up the week on the night shift and then going back to the a.m. shift the following week. As of January 19, Boddie returned to the a.m. shift.

B. Boddie's Withdrawal of the Grievance

Forehand testified that on that morning of January 20, Lauderdale asked him by phone to speak with Boddie to make certain that he was aware of, and able to attend, the scheduled grievance meeting that afternoon. Forehand had done this with employee Melvin Blue when Forehand was assistant plant manager under Brigance.

Forehand generally had a better recall of dates, places, and the sequence of events than Boddie, and I find his chronology of the following events more reliable. On the other hand, as far as what was said, I credit Boddie, finding his description more detailed and more plausible. I note that their versions were not necessarily contradictory.

Forehand went to the wash aisle and told Boddie of the grievance hearing scheduled that afternoon, and Boddie responded that he did not know that one had been filed. Forehand asked if Boddie if he wanted to follow through with the grievance because he and Payne would

[20] Tr. 515.

be rotating between the morning and evening shifts on a weekly basis. Boddie said no, and Forehand stated that he had to call Dogan and tell her.

After Forehand and Lauderdale conferred with Schulz of corporate LR, Forehand returned to the wash aisle, where he told Boddie that he needed to write out a short statement that he did not want to proceed and gave Boddie a legal paid. Very shortly afterward, Boddie wrote out and gave to Forehand a one-sentence statement: "We came to an agreement on my schedule." (GC Exh. 38). Dogan received it at the grievance meeting that afternoon. She and Boddie spoke by telephone later that day. He confirmed that he did not wish to proceed with the grievance because he had come to an agreement with management on his schedule, rotating shifts with Payne. Dogan responded that there was process that had to be followed and asked that he write out a statement so that she could close the grievance.

When I asked Boddie if he withdrew the grievance voluntarily on his own, he replied, "Correct,"[21] later explaining that he was okay with being put on a weekly rotating schedule.

I credit the following uncontroverted evidence. Shift changes on the wash aisle have regularly occurred. In 2014, Boddie and Payne rotated back and forth continuously for a year at Brigance's direction, and Respondent's Exhibit 39 reflects that in 2014, Boddie worked all three shifts that then existed, sometimes on different shifts in the same week. Before December, Payne and Boddie had been asked to switch shifts prior to Payne volunteering to work strictly evenings. The last time this occurred was 6 months earlier, when Brigance switched them.

According to Jones, the "front end" lead, it is common practice for management to have employees switch shifts with other employees. Going back to approximately 2008, she has been directed to switch shifts with other employees (some with less seniority than she) about five or six times, typically lasting 6 months to a year.

Prior to December, no grievances were ever been filed regarding shift changes.

Negotiations for a New CBA

A. Scheduling Negotiations

Morehead and Raynor were the lead negotiators for the 2013–2016 CBA, which was not negotiated until after the expiration of the preceding CBA. On November 13, Raynor wrote to Morehead and requested dates when the Company would be available to begin meeting for contract negotiations (GC Exh. 9). Although Raynor testified that he received no response from Morehead, Raynor's November 17 letter to Morehead (GC Exh. 11 at 3) states, "You requested by phone at[sic] that I propose dates for negotiations. The Union would be available the weeks of January 4 and 11. I would prefer meeting on the sixth or seventh and saving a date the next week if we need it. We can also be available the week of December 19, if needed."

[21] Tr. 1215.

In early December, Raynor and Morehead had a couple of telephone calls, in the second of which they agreed to bargain on January 6. I note that Raynor's testimony that they agreed to both January 6 and 7 is not supported by General Counsel's Exh. 11 ("sixth **or** seventh") (emphasis added) or their communications on December 29, in which Morehead stated, "I know that you were hoping to finish our negotiations in one day. . . ." (GC Exh. 16 at 2). On this point, I credit Morehead's testimony that on January 6, the parties agreed to continue negotiations the following morning

On December 29, Raynor told Morehead that he anticipated meeting with the Union's negotiating committee at 9:30 a.m. and then starting negotiations at about 10:30 a.m. on January 6 (GC Exh. 16 at 1). This contradicts Raynor's testimony that negotiations were supposed to start at 9:30 a.m. or 10 a.m. but were delayed due to Morehead's meeting with Dogan about Boddie's shift transfer grievance. I do not believe that either Dogan or Raynor were surprised that Morehead wanted to hear the grievance at 9:30 a.m. that morning.

B. Negotiations on January 6 and 7, 2016 and by Email

On the morning of January 6, Dogan and Morehead met in Morehead's conference room over the shift transfer grievance. Morehead testified without controversion, and I find, that Raynor came to his office shortly after the grievance meeting and accused the Company of using the grievance meeting to stall negotiations because of the decertification petition that was being circulated. Morehead denied this. Raynor conceded on cross-examination that any delay in starting negotiations because of the grievance meeting was only 30 minutes.

Negotiations on January 6 took place in the second floor conference room, starting at about 11 a.m. and lasting until 3:30 p.m. (Morehead) or 5 p.m. (Raynor), with only a lunch recess and caucus breaks. Morehead, Forehand, and Lauderdale represented the Company; Raynor, Dogan, and three employees represented the Union. At the outset, Raynor presented the Company with the Union's economic and noneconomic proposals (GC Exh. 17). After the parties went through them, Morehead presented the Company's noneconomic proposals (R. Exh. 25; R. Exh. 26 – Lauderdale's annotated copy; GC Exh. 18 – Raynor's annotated copy). The parties went through them one by one. The Union agreed to a number of them.

The following were among those proposals. Unless otherwise indicated, the Union did not agree to them, and they remained open.

Union recognition – adding a new sec. 3 to art. 1: new job classifications: "The Employer may, in its discretion, establish new classifications as it sees fit. In the event the Union believes that such classifications should be included in the bargaining unit, the Employer agrees to meet with the Union discuss bargaining unit placement of any such positions."

The Union agreed only to the first part of the proposal, but not the second, which the Company agreed to delete.

Union visitation – adding a new sec. 4 to art. 1, requiring the union representatives to give 48 hours' notice for visiting the facility and first presenting themselves to the Company's office to announce their presence and sign the visitor log. The Union countered with 24 hours' notice. The Company agreed.

Deleting the union security provision (art. 4). During negotiations, Morehead proposed that in exchange for eliminating monthly dues checkoff, the Company would offer employees their birthdays as a paid holiday (see GC Exh. 19).

Adding to the recall rights provision (art. 9, sec. 6) the limitation of 3 months after layoff for eligibility. The Union countered with 6 months, and the Company agreed.

Changing loss of seniority for layoffs in art. 9, sec. 10 as follows. In the existing CBA, this occurred when an employee with less than 2 years' seniority was laid off for more than 6 consecutive months, or an employee with 2 or more years was laid off for more than 12 consecutive months. The Company proposed changing this to layoffs of more than 3 consecutive months for all employees. During the negotiations, the Company offered to change this to 6 months.

Regarding non-FLMA leaves of absence – adding a new section to art. 10, which included the provision that if an employee was selected for rehire in his or her prior position, they would receive their former rates of pay "but no more than the 18 month rate."

Leaves of absence for union business (art. 10, sec. 10) – changing giving a written request to the Company from 1 week to 2 weeks. The Company withdrew this proposal.

Work injury – adding to art. 12, sec. 2, that an injured employee must immediately report the injury. The Union proposed adding "as soon as he or she becomes aware."

Raynor proposed resuming negotiations the following morning. The Company agreed, with Morehead stating that he could not go past 10:30 a.m. because of another commitment.

After negotiations finished on January 6, Morehead furnished Raynor with certain information that Raynor had requesting regarding the specific testing standards for non-Department of Transportation (DOT) employees that was contemplated by the Company's proposal for a new drug testing provision. (R. Exh. 31).

In the early morning on January 7, 2016, Raynor sent Lauderdale the Union's counterproposals on several company proposals (GC Exh. 20). Negotiations resumed at about 8 or 9 a.m. that day in the same location and went until a few minutes past 10:30 a.m. At the outset, the Company presented its second set of noneconomic proposals (R Exh. 29; R. Exh. 30 – Morehead's annotated copy; GC Exh. 21at 1–6 – Raynor's annotated copy), which incorporated their agreements the previous day.

During the negotiations, the Company agreed to remove the 18 month-rate cap for non-FMLA leave, and the parties TAed that proposal. The Company also orally agreed to add "as soon as he or she becomes aware" to its work injury proposal.

Later that morning, the Company provided its first set of economic proposals (R. Exh. 27; GC Exh. 21 at 7–9). I credit Raynor that they were not provided until January 7, over Morehead's and Lauderdale's testimony that they were provided on January 6. Raynor would have had no reason to fabricate the January 7 date he wrote on the first page of the Company's economic proposals and, as opposed to the Company's noneconomic proposals, the Company's copy of the economic proposals is undated, and the Respondent offered no explanation for this omission.

Changes in the economic proposals included:

Vacation, art. 12 – conforming the vacation benefits to the new vacation accrual policy that went into effect on January 1, 2016. The Union agreed to his but wanted to add the actual vacation accrual chart. The Company also proposed (1) deleting the "me too" clause providing that bargaining unit employees receive improved vacation benefits provided to nonunit employees; and (2) limiting vacation accrual to two times their annual vacation benefit.

Hours of work, art. 16 – deleting (1) "not to include Sunday" from the regular workweek for all production employees of 40 hours, and (2) the provisions that all Saturday work on an employee's scheduled day off be paid at time and a half as overtime with the exception of the Saturday before Martin Luther King Jr. holiday, and that all Sunday work be paid double time.

Raynor testified that they did not have time to discuss the economic proposals in detail and that he requested the parties continue to bargain after Morehead had to leave, but Morehead said no. He asked Morehead for further dates for meetings but did not recall if he specified any. Raynor could not recall if Morehead responded at the time or later. Raynor stated that the Union was prepared to meet at any time.

Subsequently, through an mail on January 11, regarding art. 12 vacation benefits, Morehead agreed to the Union's proposals to insert the vacation accrual chart and restore the "me too" clause (GC Exh. 26 at 1). The Union had also proposed a new provision in the CBA, that employees on approved leaves of absence, vacation, or other paid time off would continue to accrue vacation time per pay period. In the same email, Morehead agreed to add a provision that employees on FMLA, vacation, bereavement, jury duty, or paid personal day or other paid time off, would continue to accrue such. Raynor testified that this was not satisfactory to the Union because it did not include all types of leaves of absence, not just FMLA or other paid time off.

At some point, Raynor requested negotiations the week of January 11–15 (see GC Exh. 22 at 1). Morehead responded by an email of January 8, stating that he had out of town meetings scheduled that week and would not be available until the following week (ibid). He also rejected Raynor's request that negotiations proceed in Morehead's absence in light of

Morehead's roles as chief negotiator and general manager. Morehead went on to propose meeting on January 19 or January 20 between 9 a.m. and 3 p.m.

Raynor replied by letter of January 11 (GC Exh. 23), disputing Morehead's characterizations of their prior communications and accusing the Company of bad-faith bargaining. He accepted Morehead's offer to meet on January 19 and 20.

Morehead responded by letter of January 13, disagreeing with Raynor's accusations. He stated that the Company was not interested in extending the contract but would continue to meet and negotiate (ibid). He confirmed their meeting the following week.

The Petition and Withdrawal of Recognition on January 15, 2016

A. *The Petition's Origin*

Jamison Payne, who was never a member of the Union at the Company, testified that he was dissatisfied with union representation and, after "Googling" how to get rid of a union and looking at three websites, drew up a petition (R. Exh. 11). In mid-October, he began taking it to the facility and soliciting other employees to sign it when he and they were not on work time, i.e., on break or before or after work. There was only one copy, which he brought to work and took home daily. The only other employee who solicited signatures was Ethel Jones.

Here, I note Jackson's testimony that on one occasion Payne spoke to her about the petition when she was working and misled her as to its purpose. However, her testimony about the circumstances of their conversation was confusing to the point where determining a definitive foundation is not possible. In any event, there is no evidence that any managers or supervisors were in the vicinity or otherwise had knowledge of this; ergo, no evidence of management allowing Payne to solicit signatures on employees' work time. The General Counsel offered no other evidence that Payne misled employees, and Jackson's testimony, standing alone, is too unreliable to reach such a conclusion.

Payne testified that prior to his presentation of the petition to Lauderdale on January 15, he did not speak to any managers or supervisors about it. In this regard, Supervisor Malone testified that in early November, he approached her about signing the petition, and she declined. This is not necessarily inconsistent with Payne's testimony because his asking her to sign indicates his assumption that she was a rank-and-file unit employee.

B. *November 11 Incident – Dogan, Forehand, Lauderdale, and Streater*

Lauderdale and Forehand testified about a meeting with Dogan and Streater on November 11. Dogan and Streater did not.[22] I credit Lauderdale's and Forehand's similar but

[22] R. Exh. 34 was offered only in conjunction with Sperry's forensics analysis of Streater's signatures. Included therein are two purported statements from Streater concerning the November 11 incident. However, Streater was not asked any questions about them, and I will not consider them as evidence relating to the event.

not identical uncontroverted versions (substantially corroborated by R. Exh. 34) and find as follows.

Dogan and Streater were in the break room when Lauderdale and Forehand walked in together. Dogan stated that she had heard rumors of a petition to get rid of the Union and knew what was going on (Forehand) or that she knew what "you guys are doing" (Lauderdale).[23] Both Forehand and Lauderdale testified that this was the first time they heard of the petition. Later on that day, Lauderdale called corporate LR for guidance on what Dogan had meant about a petition.

I need not go into the details of what Dogan said to Forehand that led Morehead to order her escorted from the premises and to demand that she apologize to Forehand as a condition of being allowed back into the facility. Suffice to say, she accused him of being a racist.

Later that day, Morehead alluded to the petition in a meeting that he held with employees, and he also did so in a letter to employees that he had posted on a bulletin board the following day (GC Exh. 48). None of his statements have been alleged as violations of the Act.

C. November 14 Incident – Forehand, Malone, and Lewis

Supervisor Natasha Malone, a unit employee prior to her promotion, and employees LuCretia Lewis and Rhonda Isom were working overtime in the garment room on the morning of Saturday, November 14. I credit Lewis that Malone, after a phone call earlier that morning, stated to Isom and Lewis that Forehand wished to know if they wanted to sign the petition. Whether either Isom or Lewis directly responded is unclear (Isom had signed the petition, but Lewis had not).

Both Malone and Lewis testified that they had a conversation about the petition that morning. Lewis initiated it, based on Malone's testimony that somebody brought up the Union, "and I just said, hey, even if I could sign it, I don't want to be involved,"[24] and Lewis' testimony that Malone made that statement after Lewis said that the Union had not done anything to her and she did not want to get involved.

Forehand, who was making the rounds, came by as Isom, Lewis, and Malone were still discussing the petition. Piecing together Lewis' somewhat confusing description of the subsequent conversation, Forehand stated that Dogan had accused him of being racist, after which Isom, Lewis, and Malone complained about what Dogan did not do when she came to the plant and that she came whenever she felt like it. Forehand then said that if they did not like the Union, they could sign the petition. He also stated that Streater was leaving the Union to become a supervisor.

[23] Tr. 1832.

[24] Tr. 1059.

D. *Presentation of the Petition and Withdrawal of Recognition on January 15, 2016*

Payne had read online that he could either mail the petition to management or give it to the local HR office, and he brought it to Lauderdale, either in the morning (Payne) or in the afternoon (Lauderdale) of January 15.

As I indicated earlier, Payne's explanation of why he decided to submit the petition that particular day—coincidentally the day the CBA expired—was that he was "tired of taking it back and forth to home."[25] This professed reason for the timing is suspect in view of his testimony that he had brought the petition to work each day since mid-October, and leads to the inference that did not arrive on his own to that decision. However, suspicion alone is not tantamount to fact and cannot support a finding that anyone in management played a role in the timing.

Lauderdale immediately ran a report of all active unit employees (full-time production employees) to compare them with the names on the petition. Lauderdale did not conduct a signature check. After concluding that the employee names on the petition represented over 50 percent of unit employees, he contacted Schulz and advised her of this. She asked him to email the petition to her and Morehead. Corporate headquarters drafted the letter withdrawing recognition that was sent to the Union that day (GC Exh. 25). General Counsel's Exhibit 43 shows the unit employees working on January 15.

Solicitation of Wright to Revoke Her Dues Authorization on January 15, 2016

On the morning of January 15, Dogan sent Lauderdale three new member cards for processing for dues checkoff as per the CBA (GC Exh. 36). One of the employees was Shelia Wright, a napkin ironer.

Wright had a conversation with Forehand later that day. Wright herself did not testify about what was said. Patricia Morgan, another napkin ironer, testified that she overheard part of a conversation between Forehand and Wright by the break room door as she was on her way to the bathroom. More specifically, she saw Forehand call Wright over, and she heard him tell her that it was her choice and that she did not have to be in the Union. Afterward, Wright came over to Morgan and told her about their conversation. Morgan gave her Dogan's phone number.

Forehand was the only direct participant in the whole conversation. He testified, and I find, that toward the end of Wright's shift, at about 1 p.m., he was at ironer no. 1 when Wright approached him and said that she had signed the union membership card in error and could not afford to pay dues. She asked Wright what to do. He told her she needed to talk with Lauderdale, the Company's liaison with the Union.

Shortly thereafter, Wright approached Lauderdale as he was walking through the unloading/loading area and asked to speak to him. They want to his office, where Wright

[25] Tr. 852-853.

informed him that she had signed a card but did not know what it was, that she now understood it was for union dues that would be deducted from her check, and that she could not afford anything to be taken out from her check. Lauderdale pointed out the dues provision in the CBA and told her that the best thing for her to do was to call Dogan.

Later that day, Lauderdale spoke with Dogan by telephone about dues deductions for the new members. He asked her if she had spoken with Wright. Dogan said no, and Lauderdale told her what Wright had said. About an hour later, Wright called Dogan and stated that she did not want to join the Union. Dogan called Lauderdale and told him to disregard Wright's membership card (see R. Exh. 44).

Changes Implemented on January 18, 2016

The Respondent admits, and I find, that on January 18, it implemented the following changes without providing the Union notice and an opportunity to bargain:

(a) Granted employees paid sick leave benefits.
(b) Granted employees paid jury duty benefits.
(c) Provided employees with a paid personal holiday on their birthdays.
(d) Eliminated the half-day holiday on Christmas Eve and instead paid employees a $100 bonus.
(e) Increased the associated bonus amounts in its attendance program.
(f) Granted wage increases to all employees.

Requiring Porter to Clock Out on January 26, 2016

Art. 4, sec. 1 of the CBA provides that an employee can engage in union activities on company time only in connection with the handling of grievances.

Prior to the withdrawal of recognition, union representatives could attend grievance meetings on paid time and did not have to clock out. At the time the Company withdrew recognition, two grievances were pending—Boddie's shift transfer and Antonio Shannon's discharge. By email of January 20, Dogan requested a meeting on them, to which Lauderdale replied that they could meet that day at the Starbuck's at Union and McLean (GC Exh. 37).[26]

Patricia "Trina" Porter, the Union's vice president and new shop steward, attended the meeting that was held on January 20. Consistent with past practice when she engaged in union business, she did not clock out.

Shannon's grievance was unresolved on January 20, and the following email communications took place (GC Exh. 39). On January 22, Dogan requested a grievance meeting with Morehead (apparently the second tier of step 2); Lauderdale replied on January 25, suggesting the following day at 1:30 p.m. at the same Starbucks; and Dogan agreed that afternoon, adding that she needed Porter to be there. Shortly thereafter, Morehead asked "Why

[26] After the withdrawal of recognition, Dogan was no longer allowed on the Company's premises. The General Counsel has not alleged this as a violation.

would you need Trina?" (GC Exh. 40). On the morning of January 26, Dogan responded that she needed Porter's help in presenting the grievance because she was familiar with the grievance and more familiar with the workings of the plant (ibid).

Morehead and Porter had a conversation on January 26 concerning the grievance meeting that was scheduled that afternoon. Their versions differed.

According to Porter, she was in her work area when Morehead approached her. He said that if she did not want to go to the meeting, she could write a statement that she did not want to attend. She replied that she was going because she had worked with Shannon during the process of his suspension and termination. He told her that she would have to find a ride to the meeting because Dogan was not allowed on the premises. He told her that she would have to clock out.

Morehead, on the other hand, testified that Porter came to him on January 26 and asked him if she needed to clock out, to which he replied that he did not know because the Union no longer existed at the facility and that he would have to contact Lauderdale or Schulz because he had never before been in this situation where there was an off-site grievance meeting.

For the following reasons, I credit Porter's account, taking into full consideration her confusion on dates. As stated earlier, many aspects of Morehead's testimony raised questions about his overall credibility. More specifically as to this allegation, Morehead originally testified that Dogan did not respond to his inquiry of why Porter was needed; after being shown General Counsel's Exhibit 40 on cross-examination, he changed his answer. Morehead testified that he did not know what the policy had been regarding union steward's clocking out to attend grievance meetings. Such professed ignorance is wholly unbelievable. Morehead had been general manager at the facility since 2010 or 2011 and, moreover, was directly involved in the negotiations on the 2013 contract, which provides that employees can engage in grievance matters while on company time.

Moreover, I find Porter's version generally more plausible. Porter had never before clocked out to attend a grievance meeting, and she in fact attended the first Starbucks meeting without clocking out. In light of this, I can think of no reason why she would have approached Morehead on the day of the second Starbucks meeting and sua sponte raised the issue with him. I add one caveat: I do credit Morehead to the extent that I believe he did say something about this being a new situation, in which the Union was no longer recognized and the grievance meeting was off-site. Morehead was not involved in the first Starbucks grievance meeting, and there is no evidence suggesting that he was aware that Porter had attended it without clocking out.

Analysis and Conclusions

Independent 8(a)(1) Allegations

Section 8(a)(1) of the Act, 29 U.S.C.§§158.1, provides that it is a ULP for an employer "to interfere, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."

The standard for determining whether certain conduct violates Section 8(a)(1) is an objective one. *Westwood Health Care Center,* 330 NLRB 935, 940 fn. 17 (2000).

A. Did Forehand and Brigance, on about September 23, undermine the Union by telling employees that the Union was responsible for the Respondent's decision not to implement the incentive pay bonus system?

B. Did Forehand, in about November, undermine the Union by telling employees that the Union was responsible for delays in the Respondent's implementation of the new vacation-accrual system and of payment of the vacation bonuses?

C. Did Forehand, on about November 14, undermine the Union by telling employees that the Union was responsible for the Company's failure to offer them wage increases?

As I earlier stated, these allegations are not sustained by the evidence and, accordingly, I dismiss them.

D. Did Forehand, on two occasions on November 14, solicit the decertification of the Union by asking employees to sign such a petition?

The message that Malone related from Forehand should be treated as a potential violation on her part rather than his. Her statement was that Forehand wished to know if Lewis and Isom wanted to sign the petition.

As the Board stated in *Rossmore House,* 269 NLRB 1176, 1177 (1984), affd. sub nom. *Hotel Employees Union Local 11 v. NLRB,* 760 F.3d 1006 (9th Cir. 1985):

> It is well established that interrogation of employees not illegal per se. Section 8(a)(1) of the Act prohibits employers only from activity which in some manner tends to restrain, coerce or interfere with employee rights. To fall within the ambit of §8(a)(1), either the words themselves or the context in which they are used must suggest an element of coercion or interference.

See also *Emery Worldwide, ACF Co.,* 309 NLRB 185, 186 (1992). In *Rossmore House,* the Board adopted a "totality of circumstances" test, considering the following factors that the court articulated in *Bourne v. NLRB,* 332 F.2d 47 (2d Cir. 1964):

1. The background, i.e. is there a history of employer hostility and discrimination?
2. The nature of the information sought, e.g. did the interrogator appear to be seeking information on which to base taking action against individual employees?
3. The identity of the questioner, i.e. how high was he or she in the company hierarchy?
4. Place and method of interrogation, e.g. was the employee called from work to the boss' office? Was there an atmosphere of "unnatural formality"?

5. Truthfulness of the reply.

The *Bourne* factors are "analytical guiding lights—not a mandate for formalistic analysis." *UNF West, Inc.,* 844 F.2d 451, 461 (5th Cir. 2016); *Sturgis Newport business Forms, Inc.,* 563 F.2d 1252, 1256 (5th Cir. 1977).

Here, Malone, a first-line supervisor and former unit employee, asked one simple question in the work area, after which she, Lewis, and Isom engaged in a casual discussion in which they voiced complaints about the Dogan and the Union. Lewis expressed her desire to avoid involvement with the decertification petition. There was no history of employer hostility or discrimination or any indication that Malone was seeking information that could be used to take action against either Lewis or Isom. It is not clear if either Lewis or Isom gave a direct response. Based on this analysis, I conclude that Malone's question did not constitute coercive interrogation.

Crediting Lewis, she, Supervisor Malone, and another employee were already talking about the decertification petition when Forehand came to their work area. From Lewis' somewhat convoluted description, confirmed in part by Malone, they made disparaging remarks about Dogan and the way that the Union was representing them after Forehand arrived, and Forehand then stated that if they did not like the Union, they could sign the petition.

In these circumstances, I conclude that Forehand's statement was not coercive. He did not initiate the discussion in which the employees were complaining about the Union, he made the statement in response to their complaints, and he did not say anything that could be construed as a threat or promise of benefit if they signed or did not sign the petition.

Accordingly, I dismiss this allegation.

E. Did Forehand, on about January 15, solicit the decertification of the Union by asking Wright to revoke her signed union dues-checkoff card?

Conceptually, I have difficulty finding soliciting revocation of union dues checkoff to constitute solicitation for decertification of the Union. It also appears difficult to see why Forehand would have solicited decertification of the Union on the very day that Payne presented the signed petition to Lauderdale and the Respondent withdrew recognition.

In any event, Wright did not testify, and all Morgan heard Forehand say in his conversation with Wright was that it was her choice and that she did not have to be in the Union. Such a statement was hardly coercive. Moreover, Forehand's testimony that Wright told him that she had not realized signing the card meant dues would be deducted from her paychecks matched Lauderdale's account of what Wright said to him, and Wright confirmed to Dogan that she wanted to rescind her dues-checkoff card that she had signed earlier that day.

Therefore, I dismiss this allegation.

Alleged Prewithdrawal Unilateral Changes

An employer violates Section 8(a)(5) and (1) of the Act by unilaterally making substantial changes on subjects of mandatory bargaining; to wit, employees' wages, hours, or other terms and conditions of employment, without first affording notice and a meaningful opportunity to bargain to the union representing the employees. *NLRB v. Katz*, 369 U.S. 736 (1962); *United Cerebral Palsy of New York City*, 347 NLRB 603, 608 (2006).

Beta Test

The Respondent informed Dogan on July 20 that a premium pay system would be tested on ironer no. 2; Dogan responded the next day by stating that the Union could agree to the test provided the efficiency standard would be used only for payment of the bonus amount and not interpreted as the production standard for disciplinary purposes; and at a meeting on about July 24, Dogan stated that she understood what the Company was doing and was "on board" with it. Only after that meeting and the Union's agreement did the Company initiate the payment of bonuses retroactive to July 20. On these facts, I conclude that the Respondent afforded the Union notice and a meaningful opportunity to bargain before it acted to implement payment of the bonus. I therefore dismiss this allegation.

Changes in Vacation Accrual and STD

Prior to the September 25 meetings at which the Company announced the above changes, effective January 1, 2016, the Respondent did not give the Union prior notice. Morehead testified that this was because the vacation accrual changes constituted a benefit falling under the "me too" clause of the CBA, and the STD would be a new benefit. The Union has never disputed that company paid STD was a benefit or that approximately 85 percent of unit employees benefitted from the new vacation-accrual system.

The same day of the meetings, Lauderdale notified Dogan in writing of the changes. Thereafter, Morehead and Lauderdale had ongoing communications with Dogan and Raynor and answered their questions and concerns regarding how the new vacation-accrual policy would impact unit employees, including how the seven adversely-affected employees would be compensated by payment of a lump-sum payment. Ultimately, on December 4, the Union accepted both the vacation policy changes and the STD benefit, prior to payments of such bonuses on December 11 and effectuation of the new policies on January 1.

The Board has held that an announcement of a unilateral change in benefits can in certain situations constitute a violation of Section 8(a)(5) and (1) in and of itself and regardless of implementation. However, those decisions generally concern scenarios in which an employer has threatened and implemented a unilateral reduction in employee benefits in conjunction with the commission of other ULPs. See *Kurdziel Iron of Wauseon, Inc.,* 327 NLRB 155, 156 (1998), enfd. 208 F.3d 214 (6th Cir. 2000); *ABC Automotive Products Corp.,* 307 NLRB 248, 250 (1992). Similarly, in *UPS Supply Chain Solutions, Inc.,* 364 NLRB No. 8 (2016), following a union's certification, the employer announced unilateral reduction in health insurance benefits and then refused to bargain prior to implementation.

Here, in contrast, the changes to vacation accrual benefitted a large majority of unit employees, and STD undeniably was a new benefit; and prior to any implementation, the Company provided information that satisfied the Union to the point where it acquiesced in the changes. In these circumstances, I conclude that the Respondent did not unlawfully announce or implement changes to either the vacation-accrual policy or STD. I therefore dismiss this allegation.

Bad-Faith Bargaining Over a Successor Agreement

Under Section 8(d) of the Act, an employer and its employees' representatives are mutually required to "meet at reasonable times and confer in good faith with respect to wages, hours, and other term and conditions of employment . . . . but such obligation does not comply either party to agree to a proposal or require the making of a concession."

To determine whether an employer has bargained in good faith, it is necessary to scrutinize the totality of its conduct. *West Coast Casket Co.,* 192 NLRB 624, 636, enfd. in pertinent part 469 F.2d 871 (9th Cir. 1972); see also *St. George Warehouse, Inc.*, 349 NLRB 870, 972 (2007), citing *Logemann Bros. Co.,* 298 NLRB 1018, 1020 (1990). This includes looking at the employer's conduct both at and away from the bargaining table, as well as the substance of the proposals upon which it has insisted. *St. George Warehouse, Inc.,* 341 NLRB 904, 906 (2004); *Hardesty Co.,* 336 NLRB 258, 259 (2002).

In *Atlanta Hilton & Tower,* 271 NLRB 1600, 1603 (1984), the Board set out seven traditional indicia of bad-faith bargaining:

Such conduct includes delaying tactics, unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass the union, failure to designate an agent with sufficient bargaining authority, withdrawal of already agreed-upon provisions, and arbitrary scheduling of meetings.

Here, the General Counsel alleges that the Respondent engaged in bad-faith bargaining by its overall conduct, including more specifically, unreasonably delaying meeting with the Union and making regressive and unreasonable bargaining proposals during negotiations. I will leave aside at this point considerations relating to the lawfulness of the withdrawal of recognition.

Unreasonable Delay

Perhaps because the negotiations for the 2013 CBA continued past the date of its predecessor's expiration, the Union did not request negotiations for the 2016 agreement until November 13. Raynor indicated his availability the week of December 19 or January 6 or 7, 2016, for the first negotiating session, and he and Morehead ultimately agreed to meet on January 6. The scheduling of the grievance meeting on the morning of January 6 cannot stand as a basis for finding unreasonable delay. Thus, on December 29, Raynor told Morehead that he anticipated meeting with the Union's negotiating committee at 9:30 a.m. and then starting

negotiations at about 10:30 a.m. on January 6. Clearly, prior to January 6, Dogan and Morehead mutually agreed to meet that morning over the shift transfer grievance. In event, Raynor conceded that any delay in starting negotiations that morning due to the grievance meeting was only half an hour.

On January 6, the Union presented its proposals, and the Respondent presented its noneconomic proposals. Later in the day, Morehead agreed to Raynor's proposal to continue negotiations the following day but stated that he could meet only until 10:30 a.m. After negotiations finished on January 6, Morehead furnished Raynor with certain information that Raynor had requested regarding the Company's proposal for a new drug-testing provision. In the early morning on January 7, Raynor sent Lauderdale the Union's counterproposals on several company proposals. Negotiations resumed at about 8 or 9 a.m. that day and went until a few minutes past 10:30 a.m. The Respondent provided its second set of noneconomic proposals and first set of economic proposals.

At some point, Raynor requested negotiations the week of January 11–15. Morehead responded by an email of January 8, stating that he had out of town meetings scheduled that week and would not be available until the following week. Morehead went on to propose meeting on January 19 or 20 between 9 a.m. and 3 p.m. Raynor responded by letter of January 11, in which he accepted Morehead's offer to meet on January 19 and 20.

Based on the above, I conclude that the General Counsel has not established that the Respondent engaged in delaying tactics. The parties agreed to a first bargaining session on January 6, met again at the Union's request on January 7, thereafter exchanged proposals by email, and had further meetings scheduled prior to the withdrawal of recognition. None of the Company's actions placed unreasonable limitations on negotiations or demonstrated any kind of pattern of trying to stall bargaining.

Regressive Bargaining Proposals

The Board has held that regressive bargaining is not per se unlawful but unlawful if it is for the purpose of frustrating the possibility of agreement. *U.S. Ecology Corp.,* 331 NLRB 223, 225 (2000), enfd. 26 Fed.App. 435 (6th Cir. 2001), citing *McAllister Bros.,* 312 NLRB 1121 (1993); see also *Houston County Electric Cooperative,* 285 NLRB 1213, 1214 (1997).

Perhaps of greatest concern to the Union was the Company's proposal to eliminate union security and dues checkoff. However, such a proposal was not per se indicative of bad-faith bargaining. *Logemann Bros. Co.,* ibid; *Challenge-Cook Bros.,* 288 NLRB 387, 388 (1988). Rather, the question is whether the reasons advanced for the proposal to eliminate them are "so illogical as to warrant an inference that . . . Respondent has evinced an intent not to reach agreement . . . in order to frustrate bargaining." *Phelps Dodge Specialty Cooper Products Co.,* 337 NLRB 455, 457 (2002), citing *Hickinbotham Bros. Ltd.,* 254 NLRB 96, 102–103 (1981); see also *National Steel & Shipbuilding Co.,* 324 NLRB 1031, 1044 (1997). Moreover, the existence of a union-security clause in previous contracts does not by itself obligate the parties to include it in successive contracts. *Challenge-Cook Bros.* at 388. Here,

the Respondent did not advance any reasons for eliminating union security—but neither did the Union request any.

The Company's other proposed noneconomic changes that can be viewed as increased limitations on the union or cuts in employee benefits were:

(1) Requiring union representatives to give 48 hours' notice for visiting the facility and first having to sign in. The Union countered with 24 hours' notice, and the Company agreed.

(2) Adding the limitation of 3 months after layoff for eligibility for recall rights. The Union countered with 6 months, and the Company agreed.

(3) In the existing CBA, employees lost seniority if they were laid off for more than 6 consecutive months (less than 2 years' seniority) or for more than 12 consecutive months (seniority of 2 or more years). The Company proposed changing this to layoffs of more than 3 consecutive months for all employees. During the negotiations, the Company offered to change this to 6 months.

(4) Regarding non-FMLA leaves of absence, the provision that if an employee was selected for rehire in his or her prior position, they would receive their former rates of pay "but no more than the 18 month rate." The Company agreed to remove this cap.

(5) For leaves of absence for union business, changing giving a prior written reque3st from 1 week to 2 weeks. The Company withdrew this proposal.

The Company's economic changes that can be viewed as cuts in benefits were:

(1) Deleting the "me too" clause providing that bargaining unit employees receive improved vacation benefits provided to nonunit employees, and limiting accrual to two times employees' accrual vacation benefit. The Company agreed to restore the "me too" clause.

(2) Deleting "not to include Sunday" from the regular workweek for all production employees of 40 hours.

(3) Deleting provision that all Saturday work on an employee's scheduled day off be paid at time and a half as overtime with the exception of the Saturday before Martin Luther King Jr. holiday, and all Sunday work be paid double time.

At the Union's request, the Company agreed to insert the vacation-accrual chart in the vacation provision. The Union also proposed a new provision in the CBA that employees on approved leaves of absence, vacation, or other paid time off would continue to accrue vacation time per pay period. Morehead agreed to add a provision that employees on FMLA, vacation, bereavement, jury duty, or paid personal day or other paid time off, would continue to do so. Raynor testified that this was not satisfactory to the Union because it did not include all types of leaves of absence, not just FMLA or other paid time off.

The record thus reflects that the parties engaged in extensive discussions over various company proposals between January 6 and 15, both at the bargaining table and by correspondence; the Company agreed to withdraw or modify most of its regressive proposals;

and the Company attempted to reach agreement on a union proposal to add a new economic benefit. I emphasize the short duration of bargaining prior to the withdrawal of recognition, in contrast to a situation where protracted negotiations take place and the employer's conduct demonstrates that it is not genuinely interested in reaching an agreement. Accordingly, I dismiss the allegation that the Company engaged in bad-faith bargaining.

Withdrawal of Recognition

The foundation for exclusive bargaining representative status is majority support of unit employees. *Auciello Iron Works v. NLRB,* 517 U.S. 781, 786 (1996). In order to foster industrial peace and stability in bargaining relationships as well as employee free choice, the Board presumes that an incumbent union retains its majority status. Id. at 785–786. At the expiration of a CBA, the presumption becomes rebuttal. *NLRB v. Curtin Matheson Scientific, Inc.,* 494 U.S. 775, 778 (1990). As the Board held in *Levitz Furniture Co.,* 333 NLRB 717 (2001), an employer cannot withdraw recognition from an incumbent union unless it can show the union's actual loss of majority status, not merely a good-faith uncertainty. The burden is on the employer to prove this by a preponderance of the evidence. *Pacific Coast Supply, LLC,* 360 NLRB 538, 542 (2014).

An employer may not withdraw recognition based on a decertification petition that it has tainted by providing unlawful assistance to the decertification effort. *SFO Good-Nite Inn, LLC,* 357 NLRB 79, 79 (2011), enfd. 700 F.3d 1 (D.C. Cir. 2012); *Narricot Industries, L.P.,* 353 NLRB 775, 775 (2009); see also NLRB v. *Powell Elec. Mfg. Co.,* 906 F.2d 1007, 1014 (5th Cir. 1990). This assistance can consist of soliciting, encouraging, promoting, or providing assistance in the creation, signing or filing of a decertification petition. *Mickey's Linen &Towel Supply, Inc.,* 349 NLRB 790, 791 (2007); *Wire Products Mfg. Corp.*, 326 NLRB 627 (1998).

Similarly, other prewithdrawal ULPs can also taint a decertification petition when there is a causal connection between them. *Mesker Door, Inc.,* 357 NLRB 591, 597 (2011); *Master Slack Corp.,* 271 NLRB 78, 84 (1984), in which the Board set out a four-part test: (1) the length of time between the ULP and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee dissatisfaction from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.

Here, a majority of unit employees signed the petition, which clearly set out its purpose of ousting the Union. The General Counsel has not shown that any of the signatures were invalid or that Payne misled any of the employees who signed. I note that an employer is not required to verify signatures which appear valid on their face. *Brown and Root U.S.A.,* 308 NLRB 1206, 1207 (1992); *Harley-Davidson Co.,* 273 NLRB 1531, 1532 (1985). Accordingly, absent ULPs that tainted the petition, the Respondent has shown by a preponderance of evidence that it had objective evidence to show that the Union had lost majority status.

There is no evidence that the Respondent played any role in the decertification process. As I noted, the timing of Payne's submission of the petition to the Company raises suspicion but only suspicion and, without more, is insufficient to draw the conclusion that he received

any advice or support from the Respondent. It remains only a matter of conjuncture whether someone advised Payne to submit it on the date of contract expiration and, if so, that person's identity.

I have not found that the Respondent committed any ULPs prior to its withdrawal of recognition. I therefore conclude that the Respondent lawfully withdrew recognition on January15, and dismiss this allegation.

Bypassing the Union on January 20, 2016

A respondent violates Section 8(a)(5) and (1) when it bargains directly with employees outside the presence of their designated bargaining representatives. *Medo Photo Supply Corp. v. NLRB,* 321 U.S. 678, 683–685 (1944); *Georgia Power Co.,* 342 NLRB 199, 199 (2004), enfd. 427 F.3d 1354 (11th Cir. 2005); *Kens Building Supplies,* 142 NLRB 235, 235 (1963), enfd. 333 F.2d 84 (6th Cir. 1964).

The General Counsel contends that Forehand, on January 20, 2016, bypassed the Union and dealt directly with a unit employee by soliciting Boddie to withdraw his pending shift-change grievance. Forehand's conduct is not alleged as coercive and an independent violation of Section 8(a)(1).

I conclude that Forehand's conduct did not amount to "solicitation" of withdrawal of the grievance. Rather, Forehand first informed Boddie that Boddie would no longer be working the second shift but would be rotating with Payne on a regular basis; he then asked if Boddie still wanted to proceed with the grievance, to which Boddie replied no. Boddie confirmed this in writing to both the Company and to Dogan, and he testified that he withdrew the grievance voluntarily.

Nor do I conclude that Forehand's one simple question to Boddie amounted to bypass of the Union. Contrast *Gratiot Community Hospital,* 312 NLRB (1993), in which an HR manager "badgered" an employee to meet with him alone to settle her grievance. In light of my conclusion, I need not address any effect of the Respondent's lawful withdrawal of recognition on the Respondent's obligation to avoid bypassing the Union. I therefore dismiss this allegation.

Requiring Porter to Clock Out on January 26, 2016

Notwithstanding the lawful withdrawal of recognition on January 20, the Union continued to represent unit employees with respect to the unfinished business of their grievances. *Southwick Group,* 306 NLRB 893, 893 fn.16 (1992), partially vacated on other grounds *Nancy Watson-Taney,* 313 NLRB 628 (1994).

The Respondent continued to process the shift transfer grievance but no longer permitted the Union access to the facility. The General Counsel asserts that Morehead's requiring Porter to clock out to attend a grievance meeting violated Section 8(a)((1) and (3),

and also constituted an 8(a)(5) unlawful unilateral change in the policy that union officers or agents could attend grievance meetings on paid time.

As to the 8(a)(5) allegation, any unilateral change in policy was lawful because the withdrawal of recognition was lawful. See *Master Slack Corp.,* 271 NLRB 78 (1984).

Morehead's statements to Porter were made to her in her capacity as a union official and not to her as an employee. The situation involved her being told to clock out to perform union business after the Company had (lawfully) withdrawn recognition, not to any work-related matter. I therefore conclude that there was no 8(a)(3) discrimination against her as an employee per se. The circumstances of their conversation, in which he simply stated that she would have to clock out to attend the offsite grievance meeting, was devoid of any threats and was based on the uncertainties of the situation based on the recent withdrawal of recognition. I conclude that his statements were not coercive within the meaning of Section 8(a)(1). I therefore dismiss this allegation.

Changes on January 18, 2016

On January 18, the Company admittedly implemented the following changes without providing the Union notice and an opportunity to bargain:

(a) Granted employees paid sick leave benefits.
(b) Granted employees paid jury duty benefits.
(c) Provided employees with a paid personal holiday on their birthdays.
(d) Eliminated the half-day holiday on Christmas Eve and instead paid employees a $100 bonus.
(e) Increased the associated bonus amounts in its attendance program.
(f) Granted wage increases to all employees.

Inasmuch as I have determined that the Respondent's withdrawal of recognition on January 15 was lawful, it was free to make these changes. See *Master Slack Corp.,* above. I therefore dismiss this allegation.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in any unfair labor practices under the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[27]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. December 14, 2017

Ira Sandron
Administrative Law Judge

[27] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.